

The Department “will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary.” 86 Ill. Adm. Code 270.115(b)(2). (This is a GIL.)

November 18, 2003

Dear Xxxxx:

This letter is in response to your letter dated September 8, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am writing to you requesting a General Information Letter (GIL), pursuant to 2 Ill. Admin. Code Sec. 1200.120. The GIL contains a general discussion of the jurisdictional rules for application of local Retailers' Occupation Tax (ROT), as they relate to retail sales transactions in Illinois. GILs respond to inquiries made by a taxpayer, and we understand that GILs discuss general tax principles or applications and are not binding on the Illinois Department of Revenue (the IDOR).

FACTS

A business (the Corporation), headquartered in STATE, is a seller of medical supplies and equipment. The Corporation has branch locations and sales offices located across the United States. The Corporation has a branch location and warehouse in City A, Illinois (City A). The Corporation also has a sales office in City B, Illinois (City B) where the Corporation's Regional Credit Analyst is located.

The responsibilities of the Regional Credit Analyst in City B include:

- ? Establishing, maintaining, and updating on the Corporation's computer customer accounts and credit limits
- ? Accepting or rejecting customer purchase orders

- ? Generating a monthly report detailing purchase orders that were approved, placed on a so-called 'edit list,' or rejected.
- ? Assisting in receivable collection

The Corporation is also considering eventually moving its branch location from City A to City B.

CASH SALES

The Corporation makes on rare occasions sales to customers who walk into the branch location in City A. The customers are sometimes the Corporation's employees. The Corporation's sales clerk at the branch location takes in these cases the customer's order, accepts it, and receives payment by cash, bank check, or commercial credit card (i.e., MasterCard, Visa). The customer then walks out with the medical supplies. The Corporation applies sales tax at the combined state and local tax rate imposed at the branch location where it makes the sale.

SALES ON ACCOUNT--BY SALES REPRESENTATIVE OR VIA TELEPHONE, FACSIMILE, OR THE INTERNET

The Corporation offers sales on account to customers to help facilitate business transactions. The sales on account are offered to physician's offices or medical practices which qualify for credit. The orders for sales on account are taken by sales representatives or via telephone, facsimile, or the internet. The following steps outline the Corporation's procedures for making sales on account:

1. By Sales Representatives: The Corporation has 12 sales representatives in Illinois. They typically visit customers and provide them with brochures and product samples. A new customer deciding what to buy may view a brochure and receive product samples from a sales representative. Existing customers, typically familiar with the Corporation's products, may forward to a sales representative assigned to its office a shopping list of medical supplies or equipment required for their operations.

Each sales representative taking an order is provided with a hand-held computer system known as the ABC. The ABC is used by each sales representative to input into the computer order requests received during the day. The request identifies the physician's office or medical practice, the customer's account number, the name of the sales representative, the types and quantities of product requested, the estimated price for each product, the proposed delivery date, and the financing terms.

2. Via Telephone, Facsimile or the Internet: If an existing customer chooses to place an order via telephone, facsimile, or the internet, a Corporation sales clerk at the branch office location in City A takes the customer's order and enters the information into its computer. The information entered by the clerk identifies the physician's office or medical practice, the customer's account number, the types and quantities of product requested, the estimated price of each product, the proposed delivery date, and the financing terms.

3. An existing customer buying on account would already have established an account number, which is entered into the computer. However, if the customer is new and wants to establish a line of credit with the Corporation, the customer completes a credit application form, which is processed as follows:
 - a) The Regional Credit Analyst in City B reviews and processes the customer profile and credit information.
 - b) Depending upon the customer's references and credit worthiness, the Regional Credit Analyst approves the customer to purchase products on account and sets a credit limit for the customer.
 - c) The Regional Credit Analyst then updates in the computer the profile and credit limit.
4. Once an order request is received by the computer, it is processed and formatted into a purchase order. The computer then automatically checks each purchase order against the customer's credit and the Corporation's inventory data to determine if the purchase order exceeds established guidelines. If established guidelines are satisfied, the computer releases a pick-ticket which personnel in the Corporation's warehouse in City A may print. The pick-ticket is printed so that the warehouse personnel can get a 'head start' on the order-picking process. (However, warehouse personnel will not release the order for shipping until the Regional Credit Analyst in City B approves the order.)
5. Once a purchase order is placed in the picking-and-packing queue, the Regional Credit Analyst in City B accesses it from the computer and approves or rejects it. The Regional Credit Analyst performs in this regard the following procedures:
 - a) If the Regional Credit Analyst decides to accept the customer purchase order, he thereby unconditionally binds the Corporation to the terms and conditions of the sale. Factors impacting order acceptance include the customer's current credit profile and its previous payment history. Neither sales representatives nor headquarters, branch office, or warehouse personnel have the authority to accept customer purchase orders or to complete arrangements for release and delivery of product until the Regional Credit Analyst makes an order-acceptance decision.
 - b) If the Regional Credit Analyst decides to reject the customer purchase order, the purchase order is suspended and placed on the company's edit list. Orders placed on the edit list are resolved as follows:
 - i. A purchase orders placed on the edit list is accessed for review by the Regional Credit Analyst. Before making a final determination, the Regional Credit Analyst attempts to resolve the status of the order by obtaining more information about it from the sales representative, the sales clerk, or the customer.
 - ii. If the Regional Credit Analyst ultimately approves the order, he releases it from the edit list for shipment to the customer's location.

- iii. If the Regional Credit Analyst rejects the customer's purchase order, it is canceled, and the goods are not shipped.

ISSUE

1. What state and local tax rate should be applied to cash sales?
2. What state and local tax rate should be applied to sales made on account?

LAW

A. Sales Taxes

1. State Sales Tax

Illinois imposes the Retailers' Occupation Tax (the ROT) on persons engaged in selling at retail within the state tangible personal property. Illinois imposes the tax at the rate of 6.25 percent of gross receipts from retail sales made. 35 ILCS 120/2-10; 86 Ill. Adm. Code Sec. 130.101.

2. Home-Rule Sales Tax

The Illinois Constitution authorizes home-rule units (e.g., municipalities) to exercise certain governmental powers. Sec. 6(a), Art. VII, Ill. Const. A home-rule unit may for example impose taxes upon occupations. Sec. 6(e), Art. VII, Ill. Const. In other words, a home-rule municipality may impose a tax upon all person engaged in the business of selling at retail within its municipality tangible personal property. The tax rate may be imposed in 0.25 percent increments. 55 ILCS 5/5-1006; 65 ILCS 5/8-11-1.

3. RTA-ROT

The state imposes a Regional Transportation Authority Retailers' Occupation Tax (the RTA-ROT) on persons engaged in selling at retail within certain counties tangible personal property. The RTA-ROT is imposed at rates ranging from 0.25 to 1 percent. 86 Ill. Adm. Code Sec. 320.101(a).¹

B. Order-Acceptance Point

In determining the location of a sale for taxing purposes, the IDOR believes that the single most important element is the location where the seller accepts the customer's purchase order.² 86 Ill. Adm. Code Sec. 270.115(b), (c), 220.115(c), 630.120(b), and 320.115. ST 02-0019 PLR (August 1, 2002), ST 01-0005 PLR (February 14, 2001), ST 01-0007-PLR (February 15, 2001), ST 01-0018-PLR (May 16, 2001), ST 01-0003-PLR (February 2, 2001), ST 00-0085-GIL (April 19, 2000), ST 00-0038-GIL (March 6, 2000), ST 00-0020-GIL (January 26, 2000) and ST 91-1008-PLR (December 18, 1991), ST 93-0569-GIL (November 8, 1993), and ST 92-0333-PLR (June 30, 1992). The IDOR will assume, absent clear proof to the contrary, that the seller accepts the purchase order (i.e., makes the sale or executes the contracting action) at the place of business where the seller receives it from the purchaser. 86 Ill. Adm. Code Sec. 270.115(b)(2) and (c)(1). This is the case regardless of whether or not the purchaser takes delivery there--provided that the purchaser does receive physical possession of the property somewhere in Illinois. If the order-acceptance point is in Illinois, the location from which goods are shipped is also not controlling in connection with the imposition of local sales tax. Id.

The presumption that the seller accepts the purchase order at the location of its receipt may be rebutted when clear proof demonstrates that acceptance of the order takes place elsewhere. The IDOR has explained in numerous Private Letter Rulings (PLRs) and GILs that the location where the seller accepts the customer's purchase order is the determining element. According to the PLRs and GILs, an order is accepted only when the seller takes action that binds it unconditionally to the terms and conditions of the order.

In ST 02-0019-PLR (August 1, 2002), the IDOR asserted that, if a purchase order is accepted in a jurisdiction that imposes a local sales tax, the tax will be incurred there. In the PLR, the IDOR established that the company did not become bound to the terms and conditions of its sales on account until the company's credit manager located in CITY2, Illinois accepted the customer's purchase order. The acceptance took place only after the credit manager made a final review of the customer's account and credit. Therefore, the location of the company's credit manager in CITY2, Illinois, and the credit manager's binding acceptance in CITY2 of the purchase orders for the sales on account, established CITY2 as the Illinois jurisdiction that determined for these sales where the local sales tax applied.

In ST 01-0005-PLR (February 14, 2001), it was explained that a company maintains two offices in Illinois: City 1 is the site of the branch sales office and shipping warehouse. City 2 is the office location of the customer credit and relations analyst (the analyst). Customer orders are submitted to the branch sales office in City 1 where they are entered into the sales computer system. The sales computer system establishes customer creditworthiness and conditionally approves customer orders. The analyst in City 2 accesses all conditionally-approved orders and conducts a final review of them. After conducting a final review, the analyst informs the company's warehouse and branch sales office that he has given final approval to the orders. The IDOR determined that, even though customers' orders were given conditional approval in City 1, City 2, where the analyst makes final approval, is the jurisdiction whose local tax rate should apply. The IDOR stated that the place where the sale receives complete and unconditional approval determines what local sales tax rate should apply.

In ST 01-0018-PLR (May 16, 2001), customers are able to request pricing information from a company sales department. They may order products by phone or Internet, or from a sales representative. Orders are entered into the company's order-entry system and are conditionally approved once the customer's creditworthiness has been determined. The conditionally-approved orders are then sent for final approval to a credit analyst. The credit analyst researches the customer's credit history before making any final determinations on whether an order should be accepted or rejected. The IDOR stated that the credit analyst's evaluation of conditionally-approved orders constitutes the final action taken in accepting the purchase order. The location where the final approval takes place is the jurisdiction whose local tax applies.

In ST-93-0569-GIL (November 8, 1993), a retailer writes that salespeople located at a field office take its customers' orders. The salespersons enter the orders into a computerized order-entry system via remote hand-held transmitters plugged into telephone lines. The orders are then electronically transmitted to the retailer's central computer located at its corporate headquarters in CITY/STATE. The orders appear on a credit approval screen there. If approved by the headquarters' credit department in CITY, the orders are printed, and the items are shipped to the customers in Illinois. The IDOR opined in the GIL that the final acceptance of the orders takes place in CITY

rather than at the field office where salespeople take customers' orders. Again, it is important to note that the IDOR does not consider an order accepted until a decision that binds the seller to the order has been made.

In ST 91-0162-PLR (March 5, 1991), an oil marketing and distribution company employs a customer service clerk to take customer orders and determine if the customer has a sales account with the company. If the customer has a sales account with the company, the clerk sends the order for credit approval to the credit manager. If the credit is approved, the customer order is sent to the Executive Vice President, at the same location, for price determination and pricing authority. A billing and pricing clerk then processes the order and submits it to the commercial sales office in City 3, Illinois where it undergoes a final acceptance process. The commercial sales manager there compares the customer's order to a master customer record to verify the accuracy of the customer's information. If the order is accurate, the commercial sales manager in City 3, Illinois accepts it. After acceptance by the commercial sales manager, the order is considered binding on the company and is faxed to the dispatch center for release. The IDOR confirmed that the sales acceptance point occurs in City 3, Illinois, and this should be the jurisdiction whose local sales tax applies.

ANALYSIS

For cash sales, the order-acceptance point is at the branch location where customers' orders are accepted. Thus, state and local ROT imposed at the Corporation's branch location in City A should be applied.

For sales on account, the order-acceptance point is at the Corporation's sales office located in City B, Illinois where the Regional Credit Analyst is located. Purchase order-acceptance is determined by the following activities which take place there.

- The Regional Credit Analyst accepts customer purchase orders -- (including those which had been placed initially on the edit list) - thereby unconditionally binding the Corporation to the terms and conditions of the sale.
- Corporate personnel do not have the authority to accept customers' purchase orders or arrange for release and delivery of product until they have received the Regional Credit Analyst's acceptance of them.

It is the Corporation's intention to accept or reject all sales made on account through its Regional Credit Analyst located in City B. Thus, the local sales tax imposed in City B, Illinois should apply to all of these sales.

CONTRARY AUTHORITY AND DISCUSSION

Neither contrary authority nor discussion exists regarding the transactions discussed in this GIL.

CONCLUSIONS

1. The facts of this case support the finding that the Corporation's approval of customers' purchase orders for cash sales is at its branch location in City A, Illinois. This is because the contractually-binding selling activity takes place

there. Thus, with respect to cash sales, the Corporation should remit to the IDOR the state and local ROT imposed upon retailers doing business in City A, Illinois.

2. The facts of this case also support the finding that the Regional Credit Analyst--located in City B, Illinois--performs the final review and approval for all sales on account. Therefore, with respect to sales on account, the Corporation should remit to the IDOR the state and local ROT imposed upon retailers doing business in City B, Illinois.

We respectfully request that the IDOR issue a GIL addressing the issues presented. Your cooperation is appreciated.

The Department's regulations state that "enough of the selling activity must occur within the home rule municipality to justify concluding that the seller is engaged in business within the home rule municipality with respect to that sale." 86 Ill. Adm. Code 270.115(a)(1). (emphasis added) The Department has opined that the seller's acceptance of the customer's purchase order is the "most important single factor" in the occupation of selling. However, when order acceptance activity takes place in more than one jurisdiction, the facts and circumstances surrounding the sale must be carefully scrutinized to assure that "enough" of the acceptance activity has occurred in the home rule municipality to justify the conclusion that the sale took place there. This inquiry will ordinarily be fact-intensive and require an examination of all of the processes and procedures performed by the seller from the time the customer contacts the seller until the goods are delivered. Significantly, the Department "will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary." 86 Ill. Adm. Code 270.115(b)(2) (emphasis added.)

Over-the-counter sales are situated at the location of the sale for ROT purposes. Changing the location of the acceptance of a purchase order does not change the tax situs of an over-the-counter sale. If a sales person makes a sale, the location of the sales person will determine the situs of the transaction. Ordinarily the Department will not consider a home rule municipality to be the situs of the sale merely because a company representative physically housed in that jurisdiction performs a computer-assisted credit check on the prospective customer and "approves" or "releases" the purchase order. This is so even if the credit check is the final step in the company's order acceptance process. This is implicit in the Department's previous guidance that selling usually occurs where the purchaser accepts "a complete and unconditional offer to sell."

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk

¹ The board of commissioners of any county water commission district may also impose a sales tax on retailers of tangible personal property--the County Water Commission Retailers' Occupation Tax (the CWC-ROT). 70 ILCS 3720/4(a). The county may impose the CWC-ROT at a rate of 0.25 percent of the gross receipts from retail sales. 70 ILCS 3720/4(b). DuPage is currently the only county to impose the tax. All retailers doing business within the DuPage Water Commission district must collect the tax on their sales made there. Information Bulletin FY 88-12, Illinois Department of Revenue (the IDOR) December 1, 1987. 86 Ill. Adm. Code Sec. 630.101(a).

² '[T]he seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business...or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the home rule municipality or by someone working out of such place of business, the seller incurs Home Rule...Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.' 86 Ill. Adm. Code Sec. 270.115(b)(1).